red for the preparations already made for the divisional assembly meetings about to be held now, and the Plaintiffs are in a financial position to pay the damages. As regards Suit No. A6, if interim injunction were not granted and the Plaintiff would eventually succeed at the trial, a judgment for the Plaintiff would be merely academic as it would be too late then to put into effect the resolutions passed at the extraordinary meeting. Therefore in my judgment interlocutory injunction should be granted in all the Suits.

The Plaintiffs respectively undertaking to pay damages which they ought to pay in the event that the court will subsequently be of opinion that these orders should not be granted, I grant orders of interlocutory injunction as follows:–

Suit No. A3/1984:

Order in terms of the first alternative in prayer 1 and in terms of prayers 2 and 3.

Suite No. A4/1984:

Order in terms of the first alternative in prayer 1 and in terms of prayers 2 and 3.

Suite No. A5/1984:

Order in terms of the first alternative in prayer 1 and in terms of prayers 2 and 3.

Suite No. A6/1984:

Order in terms of the summons.

I order that costs should be costs in the cause.

Order accordingly.

Solicitors: *Shook Lin & Bok; Mah Kok & Din; Shearn Delamore & Co.*

LEE LIONG CHAN & ANOR v. TAN SRI DATUK TEH EWE LIM & ANOR.

[O.C.J. (Edgar Joseph Jr.J.) July 13, 14 & 23, 1984]

[Penang – Civil Suit No. 501 of 1984]

Societies – Political party – Election – Change of venue – Validity of disputed notice – Serious question to be tried – Balance of convenience – Equitable considerations.

The 1st plaintiff was the secretary of the Sungei Nibong Branch ('the Branch') of the Parti Gerakan Rakyat Malaysia ('the Party') and the 2nd plaintiff a committee member of the Branch. They sued the two defendants who were the Secretary General of the Party and the Chairman, State Elections Supervisory Committee respectively. The suit out of which this application arose concerned the validity of a Notice dated July 6, 1984 signed by the 1st defendant ('the Disputed Notice') calling for Branch Elections on July 15, 1984 ('the Branch Elections'). The plaintiffs claimed it was void and of no effect because he was not authorized to do so under the relevant provisions of the Party Constitution. The plaintiffs sought a declaration to that effect and they made the present application for an interlocutory injunction to restrain the defendants from holding the election of office bearers for the years 1984/1985 for the Branch of the Party on July 15, 1984 at the Pesta Grounds, Sungei Nibong, Pulau Pinang.

According to the defendant, there was protest against the choice of Balai Raya, Sungei Ara, as the venue for the Branch Elections. Eventually it was changed to the Pesta Grounds which was found to be more suitable. The 1st defendant signed the Disputed Notice which had to be sent because of the change of venue. Both plaintiffs had filed their nomination papers at the Headquarters. The validity of the Disputed Notice depended on the interpretation of certain provisions in the Rules and the Constitution quoted in the judgment.

Held: (1) the Disputed Notice was valid and effective for all purposes;

(2) general equitable considerations barred the plaintiffs' claim for an injunction;

(3) there was no serious question to be tried. The balance of convenience favoured the defendants rather than the plaintiffs since the institution of fresh election procedures would necessarily entail much expense, time and effort and most probably serve no practical purpose.

Cases referred to:

(1) *Erinford Properties Ltd. & Anor.* v. *Cheshire County Council* [1974] Ch. 261.

(2) *American Cyanamid Co.* v. *Ethicon Ltd.* [1975] 1 All E.R. 504.

(3) *Re State of Wyoming Syndicate* (1901) 2 Ch. 431.

(4) *Cooper* v. *Kerr Steward & Co.* [1900] 83 L.T. 729.

(5) *Colquhoun* v. *Brooks* (1889) 14 App. Cas. 493, 506. (1888) 21 Q.B.D. 52, 65.

(6) *Lincoln College's Case* 76 E.R. 764.
(7) *Colquhoun* v. *Brooks* (1888) 21 Q.B.D. 52, 65.
(8) *Fothergill* v. *Monarch Airlines* [1981] A.C. 251, 280.
(9) *Pratap Singh* v. *Shri Krishna* [1955] 2 S.C.R. 1029 A.I.R. 1956 S.C. 140; [1956] S.C.J. 143.
(10) *Punjab Co-operative Bank Ltd., Amritsar* v. *C.I.T., Lahore* 67 I.A. 464; A.I.R. 1940 P.C. 230; (1941) 1 Mad. L.J. 130.
(11) *Everett* v. *Griffiths* [1924] 1 K.B. 941, 960-961.
(12) *Odhams Press Ltd.* v. *London & Provincial Sporting News Agency (1929) Ltd.* [1936] Ch. 357.
(13) *Diary Farmers' Co-operative Milk Co., Ltd.* v. *Commonwealth.* (1946) 73 C.L.R. 381.
(14) *Ibeneweka* v. *Egbuna* [1964] 1 W.L.R. 219, 225.

CIVIL SUIT.

Tan Khek Pheng (*Yu Meng Queng* with him) for the plaintiffs.

K. Balasundaram for the defendants.

Cur. Adv. Vult.

Edgar Joseph Jr. J. : This is yet another of a rash of political cases which have recently engaged the attention of our Courts in the Federal Capital, in Ipoh and in Penang. This time, the contest is between certain adherents of the Parti Gerakan Rakyat Malaysia ("the Party"), more particularly, the two Plaintiffs who are the Secretary and a Committee Member of its Sungei Nibong Branch ("the Branch"), respectively, whilst the two Defendants are the Secretary General of the Party and the Chairman State Elections Supervisory Committee, respectively.

The suit out of which this Application arose is about the validity of a Notice date July 6, 1984 signed by the First Defendant ("the Disputed Notice") calling for Branch Elections on July 15, 1984 ("the Branch Elections"). The Plaintiffs said that it is void and of no effect because he was not authorised to do so under the relevant provisions of the Party Constitution ("the Constitution"). They are accordingly praying, *inter alia*, for a declaration to that effect. No Statement of Claim has, as yet, been delivered though the Defendants have entered an appearance.

It is against this background that the Application by the Plaintiffs for, *inter alia*, an interlocutory injunction to restrain the Defendants by themselves, their servants or agents or otherwise however from holding the election of office bearers for the years 1984/1985 of the Branch of the Party on Sunday, July 15, 1984, at the Pesta Grounds, Sungei Nibong, Pulau Pinang, was made and heard five days ago.

At the conclusion of the hearing, on that day, I reserved my decision until the following day, when I dismissed the Application with costs, giving in a few lines my findings for that decision but, adding, that I reserved my right to give formal grounds in the event of an appeal. I also refused a request for a more limited injunction preserving the *status quo* pending an appeal against the dismissal of the Application: (see *Erinford Properties Ltd. & Anor.* v. *Cheshire County Council*[1]). To have granted such a request would have been tantamount to granting the Application itself thus making a mockery of my decision. An appeal having been lodged I now proceed to give my grounds.

First, the facts which may be culled from the affidavits in support of, and in opposition to, the Application may be stated, quickly, thus:

According to the First Plaintiff, the Branch Elections of the Party were scheduled for July 15, 1984 at the Pesta Grounds, Sungei Nibong, Pulau Pinang. So, on the request of one Dr. Chin Fook Weng, Secretary of the State Elections Supervisory Committee and, by virtue of Rule A6 of the Rules Governing the Election of Office Bearers and Delegates ("the Rules"), he did sign a notice calling for a meeting for the Branch Elections, in his capacity as Branch Secretary. The venue of the Branch Elections, designated in the notice was Balai Raya, Sungei Ara, Pulau Pinang.

Subsequently, however, the Second Defendant, who was the Chairman of the State Elections Supervisory Committee, by a letter date June 13, 1984, informed one Mr. Khaw Teong Gan, the Chairman of the Branch, that the venue would be changed to the Pesta Grounds, Sungei Nibong.

The Branch Committee, however, was not happy about this and protested, asking that the original venue, namely Balai Raya, Sungei Ara, be restored. Mr. Khaw made this known by a letter dated June 18, 1984, addressed to the Second Defendant but the request was declined.

As a result, Dr. Chin Fook Weng requested the First Plaintiff to sign a new notice designating the Pesta Grounds, Sungei Nibong, as the venue and, for this purpose, to call at the Party Headquarters at 161, Road 5, Changkat Minden, Pulau Pinang

("Premises 161") before 5.00 p.m. This he declined to do.

In consequence, the Disputed Notice dated July 6, 1984 calling for the Branch Elections, signed by the First Defendant in his capacity as Secretary General of the Party was sent out by the State Elections Supervisory Committee, as required under Rule A6.

The Disputed Notice stated that Nomination Forms were obtainable from Saudara Chin Fook Weng and that completed forms should be delivered in person to the Branch Elections Committee between 3.00 and 5.00 p.m. at Premises 161, contrary to Rule A7 of the Rules, which requires Nomination Forms to be delivered in person to the Branch Elections Committee Members between the hours of 10 o'clock and 5 o'clock in the afternoon on the day of nomination at the Branch Registered Office which was at 10A, Jalan Glugor, Pulau Pinang.

In the result, the First Plaintiff alleged, that he had been deprived of his rights and privileges as a member of the Party as well as the Branch Secretary and that such deprivation is unconstitutional. He further alleged that the Disputed Notice was *ultra vires* the Constitution and Rules and, therefore, invalid.

Similarly, the Second Plaintiff alleged that he was standing as a candidate for the post of Committee Member in the Branch Elections. He further alleged that he, too, would suffer irreparable damage, as a member, since he would be deprived of his right to be elected as a Committee Member of the Branch, the right to support candidates of his choice to the Division at the State Liaison Assembly and the Delegates Conference at the National Level.

According to the Defence (and this was neither challenged nor contradicted by the Plaintiffs), one Dr. Choong Sim Poey, a Branch member and intending candidate for the post of Chairman, protested against the choice of the Balai Raya, Sungei Ara, as the venue for the Branch Elections and suggested instead the Pesta Grounds, Sungei Nibong. This is what led to the Second Defendant meeting with the Branch Chairman and Secretary to consider a change in venue but they declined. There being a dispute concerning the Branch Elections which the Second Defendant as Chairman was unable to resolve at the level of the State Election Supervisory Committee, he referred the matter to the First Defendant who, as Secretary General of the Party, was also the Chairman of the National State Elections Supervisory Committee. This decision to refer the dispute was in accordance with a decision taken by the Central Committee of the Party at its meeting on May 12, 1984.

The Second Defendant also informed the First Defendant that he and the Secretary of the State Election Supervisory Committee had inspected both the Pesta Grounds and Balai Raya, Sungei Ara, and had found the former the more suitable of the two; whereupon, the First Defendant took the decision to change the venue to the Pesta Grounds.

According to Dr. Chin Fook Weng, the Secretary of the Penang State Elections Supervisory Committee of the Party, the Disputed Notice had to be sent by reason of the change of venue of the meeting from Balai Raya, Sungei Ara, to Pesta Grounds, Sungei Nibong. The First Defendant in his capacity as Secretary General of the Party had to sign it since the First Plaintiff had declined to do so. Also, as the Branch Elections were scheduled for July 15, 1984 it was necessary for notices of meeting to be sent out on July 6, 1984 so that they would reach members in time to comply with the requirement of seven days' notice. He further alleged that Nomination Forms were not sent out with the Disputed Notice as the State Elections Supervisory Committee had earlier decided that to do so would incur additional expenses.

He further alleged that the State Elections Supervisory Committee had also previously decided that Nomination Forms could be delivered to the Branch Elections Committee at the Party Headquarters at Premises 161 between 3.00 to 5.00 p.m. on the day fixed for nomination. The period for submission of Nomination Forms was shortened because, it was thought, that there being few persons involved, it was sufficient. It was also decided to restrict the receipt of nominations to only one centre on the Island, namely, Premises 161, and, another centre, in Province Wellesley on the mainland. It was said that this procedure had been followed in all Branch Elections which had hitherto taken place.

Both Plaintiffs had filed their nomination papers at the Party Headquarters at Premises 161 though this was done on a without prejudice basis.

Finally, it was denied that either or both Plain-

tiffs or any member of the Branch had been deprived of any of their rights or privileges.

As the question whether or not the Disputed Notice was valid, if answered in favour of the Defendants, would effectively dispose of the suit thus leaving no serious question to be tried (see *American Cyanamid Co.* v. *Ethicon Ltd.*[2]) I considered it expedient and fair to determine it as a Preliminary Point of Law.

Clearly, the determination of this question depended upon the true interpretation of certain provisions in the Rules and the Constitution.

The only provisions of the Rules to which it is relevant to refer are these:

Rule A6: Notice in writing of Branch elections together with the prescribed Nomination Form shall be sent by the Branch Secretary to every voting member of the branch at the address appearing in the qualifying register of membership at least seven days before the date fixed for the branch elections with a copy to the Secretary General and the Secretary of the State Liaison Committee. The Notice shall be signed by the Branch Secretary and sent out by the State Election Supervisory Committee.

Rule A7: All Nominations in the Prescribed Form for Branch Elections shall be handed in to the Branch holding the elections at least 3 days before the date of Branch Elections. The Nomination Forms must be delivered in person to the Branch Election Committee members who shall acknowledge it on the second copy between the hours of ten o'clock and five o'clock in the afternoon of the day of nomination at the Branch registered office.

Similarly, the only provisions of the Constitution to which it is relevant to refer are these:

Article 66 (a): The President may for the purpose of carrying out routine administration and for dealing with emergencies or urgent matters appoint a Central Working Committee comprising himself as Chairman, the Deputy President, the Secretary-General, the National Treasurer and such other members of the Central Committee not exceeding 3 as the President may appoint provided that such appointments of members have been reported to Central Committee.

Article 96: All State Liaison Committees shall subject to the powers of the Delegates' Conference supervise and direct the activities of the Branches and Divisions in their respective States.

Article 97: The Delegates' Conference shall have the powers to supervise and direct the activities of all Branches, Divisions and State Liaison Committees.

Article 99: Every Committe shall have the power to delegate its duties to any office-bearer or a Sub-Committee or Working Committee.

Article 100 (a): The Secretary-General shall have the power and shall carry out the duties of administering and co-ordinating all the activities of the Central Committee and the Delegates' Conference and all State Liaison Committees, Divisions, Branches and Sub-Branches and acting in accordance with the directions and instructions given and the policies laid down by the Delegates' Conference, the Central Committee, the Central Working Committee and the President.

Article 100 (b): The Secretary-General shall be the Chief Executive Officer. He shall be responsible for the appointment of the Executive Secretary, Organising Secretaries and such other staff as are necessary, after approval has been obtained from the Central Working Committee for such appointments.

Article 101: The Secretary-General shall have the power to make such rules and regulations as he may deem necessary from time to time for the efficient administration of the Secretariat, and to determine the terms and conditions of the Staff in the Secretariat.

Article 102: The Deputy Secretary-General shall carry out the duties assigned to him by the Secretary-General.

Article 103: The Secretary of the State Liaison Committee shall carry out the functions and duties of administering the State Liaison Committee and shall carry out in particular the duties assigned to him by the Secretary-General.

Article 105 (a): The Secretary of a Branch shall carry out the functions and duties of administering the Branch and co-ordinating all the activities of the Sub-Branches under such Branch and shall carry out in particular the duties assigned to him by the Secretary of the Divisional Committee to which the Branch belongs and/or by the Secretary-General.

Article 127: The Secretary-General in consultation with the President of the Party or the Secretary in consultation with the Chairman of any Committee or Sub-Committee of the Branch, Division or State Liaison Committee thereof may call at any time a meeting of the body over which they represent.

Article 128 (a): Notice of any such meeting shall be in writing and be of the following duration:

(i) Delegates' Conference at 21 days notice.

(ii) Central Committee, State Liaison Committee or Division at least 14 days notice.

(iii) Branch at least 7 days notice.

(iv) Any Sub-Committee or Committee at least 7 days notice.

Provided that the President or Chairman of the State Divisional or Branch Committee or Sub-Committee concerned may in cases of urgency give such notice as he may think fit but such notice shall not be less than half the period provided for above.

Article 162 (b): Where for any reason whatsoever the person or body of persons empowered or whose duty it is under this Constitution to carry out any act is unable or is un-

willing or neglects without good and sufficient cause to do so, the Committee immediately concerned may itself perform such act or discharge such duty or appoint such other person as it may think fit to do so.

Article 168: The Standing Orders and Rules of the Party shall be deemed to be part of this Constitution and accordingly shall have the same force and effect.

I have also kept in the forefront of my mind the following well settled Principles of Law which counsel for the Plaintiffs stressed:

(1) Where there are special measures regulating the nature of the requisite notice, more particularly as to the form the notice should take, those measures must be observed meticulously;

(2) Failure to comply with any measure as to notice will vitiate the meeting and any business transacted pursuant thereto;

(3) Notice of meeting must be given by the proper person, that is, by the person or persons designated under the relevant measure to convene the meeting: *Re State of Wyoming Syndicate*[3]. However, a notice issued without proper authority may be ratified by the convening authority and the meeting which follows will be valid: *Cooper* v. *Kerr Stewart & Co.*[4].

Now, the Party has a four-tiered structure and, working upwards, it is as follows: at the base, in other words, at its lowest level, is the Branch, then the Division, the State, and at the apex, in other words, at its highest level, is the National Body.

It is necessary, first of all, to examine the legal position of the Secretary-General and the Branch Secretary. This involves a consideration of their powers and duties.

I shall first consider the Secretary-General's position.

He has power to make such rules and regulations as he may deem necessary from time to time for the efficient administration of the Secretariat and to determine the terms and conditions of its staff (Article 101). He is empowered to assign duties even to the Secretary of the State Liaison Committee or the Secretary of a Division (Article 103). More particularly, he is empowered to assign duties to the Branch Secretary who must carry them out (Article 105A).

I would, for instance, regard the request by the Second Defendant, acting on the instructions of the First Defendant, addressed to the First Plaintiff, the Branch Secretary, to sign the Disputed Notice, as made under this latter provison. The First Plaintiff was therefore obliged to comply with such request and, his refusal to do so, was a clear act of insubordination.

Next, where for any reason whatsoever a person empowered under the Constitution to carry out any act is unable or is unwilling or neglects without good and sufficient cause to do so, the Committee immediately concerned may itself perform such act or appoint such other person to do so (Article 162 (b)).

This brings me to the decision dated May 12, 1984 of the Central Committee that disputes in Branch Elections should be left in the first instance to the State Elections Supervisory Committee and only when it cannot be resolved at that level should it be resolved at the National Elections Supervisory Committee Level. This is precisely what happened in this case so that when the First Defendant took the decision to sign the Disputed Notice in his capacity as Chairman of the latter body he was duly authorised to do so under Article 162 (b).

Lastly, I need only mention the very extensive powers which the Secretary General enjoy of administering and coordinating all the activities not only of Branches and Sub-Branches but of the Central Committee, the Delegates Conference, State Liaison Committees and Divisions (Article 100 (a)). He may also, though in consultation with the President of the Party, call at any time a meeting, inter alia, of a Branch (Article 127).

I now turn to consider the position of the Secretary of a Branch.

On this topic I find precious little in the Rules and, nothing in the Constitution, relevant to the Preliminary Point of Law.

He is empowered to sign a notice in writing of Branch Elections but this has to be sent out by the State Elections Supervisory Committee (Rule A6).

The conclusion to be drawn from the combined effect of the provisions just cited is irresistible, and it is this: the Secretary-General occupies a dominant position in the Party set-up. He is the

chief administrative and executive officer of the Party with executive duties and responsibilities.

On the other hand, the Branch Secretary is a mere servant or clerk who does what he is told to do, his duty being of a limited and humble character.

It was submitted by counsel for the Plaintiffs that where there is a special measure conferring power upon the Branch Secretary to sign a notice of Branch Elections (see Rule A6) this overrides the general powers conferred upon the Secretary-General under Article 100(a) applying the maxim *expressio unius est exclusio alterius.*

At first, I was much impressed with this submission but, upon closer examination, the impression was quickly dispelled in that it failed to take into account or give proper weight to the well known canon of construction that exact colour and shape of the meaning of words in an enactment is not to be ascertained by reading them in isolation. They must be read structurally and in their context for their significance may vary with their contextual setting. By "context" here is meant in a wide sense; this requires that provisions which bear upon the same subject matter must be read as whole in their entirety; each throwing light and illumining the meaning of the other.

So, Rule A6 and Article 100A cannot be read in isolation but by a careful consideration of the context in which they occur. As Lord Herschell said in *Colquhoun* v. *Brooks*[5]

"It is beyond dispute, too, that we are entitled and indeed bound when construing the terms of any provision found in a statute to consider any other parts of the Act which throw light upon the intention of the legislature and which may serve to shew that the particular provision ought not to be construed as it would be if considered alone and apart from the rest of the Act."

And this is what Coke said in the *Lincoln College's case*[6]:

"The office of a good expositor of an Act of Parliament is to make construction of all parts together and not one part by itself."

And, as regards the maxim *"expressio unius"*, it has been aptly described by Lopes, L.J. in *Colquhoun* v. *Brooks*[7] as follows:

"It is often a valuable servant, but a dangerous master to follow in the construction of statutes or documents. The exclusio is often the result of inadvertence or accident, and the maxim ought not to be applied, when its application, having regard to the subject-matter to which it is to be applied, leads to inconsistency or injustice."

If the relevant provisions of the Rules and the Constitution are construed as indicated above and with a discerning eye, then the individual roles and status of the powerful Secretary-General and the humble Branch Secretary will be seen in their true perspective.

I must also say that I find the construction contended for by counsel for the Plaintiffs, as regards this part of the case, unduly restrictive and artificial and, its effect, is to drain the Constitution and the Rules of much of thier vitality. It can also lead to unjust and unreasonable consequences.

Looking at the arguments for the Plaintiffs in its most favourable light, the words of the relevant Articles and Rules are, at most, capable of more than one meaning, a broad one or a narrow one. The board meaning leads to a just and reasonable result, and I prefer it.

In any event, I would suggest that it is implicit in these provisions, that the First Defendant could, by virtue of the decision of the Central Working Committee of May 12, 1984, sign and send a notice calling for Branch Elections. As Lord Denning said: "A judge should not be a servant of words used. He should not be a mere mechanic in the power-house of semantics; he should be the man in charge of it." The House of Lords case of *Fothergill* v. *Monarch Airlines*[8] illustrates this.

I am therefore fully satisfied that the First Defendant was authorised to sign the Disputed Notice.

The remaining points in this Application may be dealt with shortly.

It was also argued that the Disputed Notice was bad, in that:

(1) it was not accompanied by the prescribed Nomination Forms

(2) the period specified in it for handing in the Nomination Forms to the Branch Election Committee specified in the notice, i.e., from 3 p.m. to 5 p.m., was too short;

(3) it required the completed Nomination Forms to be delivered in person to the Branch Committee not at the Branch Registered Office but at its Headquarters at Premises 161 contrary to Rules A6 and A7.

I agree with the submission of counsel for the Defendants that these provisions are not mandatory but merely directory and that their non-compliance may be condoned, especially in view of the explanations offered, and which I accept. The breaches are, after all, of purely procedural requirements and Courts should look to the substance rather than the form. I am fortified in this view by the following authorities which were uncovered during my researches.

In *Pratap Singh* v. *Shri Krishna*[9], the appellant was a candidate for the office of President of a Municipal Committee. The nominations were made on forms which were old forms requiring the caste of the candidate to be stated, whereas the changed rule required the occupation of the candidate to be stated. All candidates filed their nominations in the old forms, but the respondent who knew the change in the law, struck out the word 'caste' put in 'occupation' and gave his occupation. The appellant having been elected, the respondent challenged the election and the High Court, in appeal, set aside the election. Allowing the appeal, the Supreme Court held: We do not think that any failure to comply with any of the provisions set out in the various rules is fatal, and we deprecate this tendency towards technicality; it is the substance that counts and must take precedence over mere form. Some rules are vital and go to the root of the matter: they cannot be broken; others are only directory and a breach of them can be overlooked provided there is substantial compliance with the rules read as a whole and provided no prejudice ensues; and when the legislature does not itself state which is which judges must determine the matter, and, exercising a nice discrimination, sort out one class from the other along broad based common sense lines.

In *Punjab Co-operative Bank Ltd., Amritsar* v. *C.I.T., Lahore*[10], Viscount Maugham referred to the same principle in these terms:

"It is a well settled general rule that an absolute enactment must be obeyed or fulfilled exactly, but it is sufficient if a directory enactment be obeyed or fulfilled substantially."

I fail to see how, in the circumstances, the errors or omissions to comply with the provisions of Rule A7 can be regarded as being of such a serious or vital nature as to vitiate the Disputed Notice.

Looking back, I must see if I have inadvertently omitted anything, and I find that on general equitable considerations, too, this Application was bound to fail.

Clearly, the Application, and indeed the Action itself, have as their object the restoration of Sungei Ara as the venue for the Branch Elections but, curiously, no reason was vouchsafed as to why this was necessary. Certainly, this omission does nothing to help the Plaintiffs' allegation that were the Application refused, they would suffer irreparable damage. If anything, it seems only to hinder their Application, since the Court can take into consideration the motives of the Plaintiffs in a declaratory action: *Everett* v. *Griffiths*[11]. There appears, therefore, to be a deplorable lack of candour on the part of the Plaintiffs which they have not cared to explain. I cannot therefore say that they have come to Court with clean hands though I do not place undue stress on this aspect of the case.

Upon the evidence before me, the Suit and the Application appeared to be a pointless pantomime of little or no practical value and I would exercise my discretion by refusing the relief sought: see, for example, *Odhams Press Ltd.* v. *London & Provincial Sporting News Agency (1929) Ltd.*[12]; *Diary Farmers' Co-operative Milk Co., Ltd.* v. *Commonwealth*[13]. I am of the opinion, therefore, that on this ground also, there is no serious question to be tried. As Lord Radcliffe said in *Ibeneweka* v. *Egbuna*[14]: "After all, it is doubtful if there is more of principle involved than the undoubted truth that the power to grant a declaration should be exercised with a proper sense of responsibility and a full realization that judicial pronouncements ought not to be issued unless there are circumstances that call for their making. Beyond that there is no legal restriction on the award of a declaration."

Again, according to *Halsbury's* Laws of England, Vol. 1, Third Edition, page 14,

"Where .... a plaintiff has no good reason for wishing to vindicate his right, it is not the policy of the courts to encourage the bringing of actions unless actual appreciable damage has been suffered; and in such cases they may apply the maxim *de minimis non curat lex*. Thus the plaintiff's injury may be of so small and little consideration in the law that no action will lie for it."

By way of postscript, I gather from Press Reports that the Branch Elections were duly held on the appointed day and, perhaps, the Plaintiffs participated in them, so that assuming I am wrong in having held that there is no serious question to be tried, then, I consider that the balance of convenience is certainly in favour of the Defendants, since the holding of fresh election procedures would necessarily entail much expense, time and effort and most probably serve no practical purpose.

SUMMARY OF CONCLUSIONS

As the question whether the Disputed Notice was valid, if answered in favour of the Defendants, would effectively dispose of the Suit, leaving no serious question to be tried, it is expedient and fair to determine it as a preliminary Point of Law.

A. The Disputed Notice was valid and effective for all purpose for the following reasons:

1) Upon a true construction of the relevant provisions of the Rules and the Constitution the First Defendant as Secretary General occupies a dominant position in the Party; he is the Chief Administrative and Executive Office of the Party, whereas, the First Plaintiff as Branch Secretary is a mere servant who does what he is told to do, his duty being of a limited and humble character;

2) though, at first sight, Rule A6 may appear to confer exclusive authority upon the Branch Secretary to sign the Disputed Notice, regard being had to the maxim *expressio unius*, closer examination of the relevant provisions shows that this is not so;

3) the rule *expressio unius* is often "a valuable servant but a dangerous master" and is always subservient to the basic principle that courts must endeavour to ascertain the true intent and purpose of the statute or document concerned; this should be done by applying the rule of construction that exact colour and shape of the meaning of words is not to be ascertained by reading them in isolation;

4) applying the approach stated in paragraph (3) supra I find that:

   (a) the individual roles and status of the powerful Secretary General and the humble Branch Secretary may be seen in their true perspective;

   (b) the request by the Second Defendant, acting on the instructions of the First Defendant, addressed to the First Plaintiff, was made pursuant to Article 105A. Non-compliance by the First Plaintiff with this request was therefore an act of insubordination;

   (c) when the First Defendant took the decision to sign the Disputed Notice in his capacity as Chairman of the National Elections Supervisory Committee, he was merely implementing the decision of the Central Committee dated May 12, 1984. Consequently, this act of his was authorised under Article 162 (b)."

5) Alternatively, if contrary to my primary views, the relevant provisions of the Rules and Constitution are unclear and open to more than one meaning; a broad one favouring the Defendants' arguments, and a narrow one favouring the Plaintiffs' arguments, I would prefer the broad one, as it leads to just and reasonable results.

6) In any event, it is implicit in the provisions of Articles 100 (a), 127 and 162 (b) that the Secretary General could by virtue of the decision of the Central Committee dated May 12, 1984 sign and send the Disputed Notice.

7) The remaining points relied upon in support of the argument that the Disputed Notice was invalid disclosed breaches of certain provisions of the Rules which were not mandatory but directory and which could thus be condoned especially in view of the explanations offered which I accepted.

B. Quite apart from the question of the validity of the Disputed Notice there were also general equitable considerations which operated to bar the Plaintiffs' claim for an unjunction. The purpose of the Suit and the Application was to ensure a restoration of the Sungei Ara venue but why this was necessary was never explained. I was not satisfied that the Plaintiffs had come to Court with clean hands.

C. Lastly, the balance of convenience favours the Defendants rather than the Plaintiffs since the institution of fresh election procedures would necessarily entail much expense, time and effort and most probably serve no practical purpose.

It was for the above reasons that I dismissed the Application with costs.

Application dismissed.

Solicitors: *Tan Yu & Co.; Balasundram & Co.*

PETER NG TECK JOO v. VINCENT PONNIAH

[O.C.J. (Vohrah J.) August 29, 1984]

[Kuala Lumpur – Civil Suit No. F 133 of 1983]

Contract – Sale of land – Time the essence of contract – Failure to pay agreed sum in time – Forfeiture of part payment – Specific performance – Striking out – Whether reasonable cause of action – R.H.C. 1980, O.18 r.19.

By a written agreement made between the plaintiff and the defendant, it was agreed that the plaintiff purchase a piece of land with the building thereon at the sum of $250,000, subject to the terms and conditions therein. The plaintiff made part payment of $25,000, and the balance of $225,000 was to be paid as follows: (a) On or before October 30, 1982, a sum equivalent to the outstanding due for the redemption of the land from the Bank; (b) On or before November 23, 1982 the balance less sum paid under (a). Time was expressly declared to be of the essence of the contract. There was also an express term that failure to pay the balance as provided would entitle the defendant to forfeit the sum of $25,000 and treat the agreement as null and void and of no further effect with neither party having any claim against the other.

The plaintiff failed to pay the redemption sum on or before October 30, 1982 and the defendant forfeited the sum of $25,000. On November 6, 1982 the plaintiff tendered the cheque for the redemption sum but it was rejected by the defendant. On November 19, 1982 the plaintiff tendered 2 cheques, one for the redemption sum and the other for the balance less the redemption sum but the cheques were returned by the defendant whereupon the plaintiff sued for specific performance of the contract. The defendant applied under O. 18 r. 19, Rules of the High Court, 1980, for an order that the statement of claim be struck out and action dismissed on the main ground that the statement of claim disclosed no reasonable cause of action.

Held: (1) where time has been stipulated in an agreement expressly to be of the essence it is of primary importance and the time stipulations must be adhered to;

(2) the question of the reasonableness of the tender of the redemption sum within 5 days of the deadline is quite irrelevant. So also is the question of any requirement on the part of the defendant to give notice to the plaintiff to make payment within a reasonable time after the deadline;

(3) accordingly, the statement of claim discloses no reasonable cause of action and it must be struck out and the action dismissed with costs.

Cases referred to:

(1) *S. Ayadurai* v. *Lim Hye* [1959] M.L.J. 143.
(2) *Jamshed Khodaram Irani* v. *Burjorji Dunjibhai* (1916) 43 I.A. 26; A.I.R. 1915 P.C. 83.
(3) *Steedman* v. *Drinkle & Ors.* A.I.R. 1915 P.C. 94.

CIVIL SUIT.

K.S. Narayan (*C. Anandakrishnan* with him) for defendant/applicant.

T. Lee for plaintiff/respondent.

Cur. Adv. Vult.

Vohrah J.: This is an application under Order 18 rule 19 of the Rules of the High Court 1980 on the part of the defendant for an order that the statement of claim of the plaintiff be struck out and his action dismissed with costs on the ground that the statement of claim discloses no reasonable cause of action or that it is frivolous and vexatious or is otherwise an abuse of the process of the Court. The action is for specific performance of an agreement for the sale and purchase of land and alternatively for the return of a sum of money which was paid as consideration for the agreement and deemed as part payment of the purchase price.

The relevant facts of the case are as follows. The defendant is the registered owner of a piece of land held under H.S.(D) 26199 P.T. No.41145 in the Mukim of Kuala Lumpur together with a double-storeyed link house erected thereon known as No.9, Jalan Pudina, Bukit Bandaraya, Kuala Lumpur ("the property"). By an agreement dated August 4, 1982 made between the plaintiff and the defendant it was agreed that the plaintiff purchase the property from the defendant for the sum of $250,000/- subject to the terms and conditions set out in the agreement (See Exh. VP-1, Encl. 7). The plaintiff paid a sum of $25,000/- as deposit and part payment towards the purchase price (See Clauses 1 and 5) and the manner in which the balance was to be paid was provided for by Clause 3 which reads as follows:-

"3. The balance of the purchase price in the sum of Ringgit Two Hundred and Twenty Five Thousand $225,000.00 shall be paid in the following manner :-

(a) The Purchaser shall on or before October 30, 1982 pay Messrs Ng Ek Teong & Partners of Bangunan Hokkien Association, Jalan Klyne, Kuala Lumpur (hereinafter called the Vendor's solicitors) a sum equivalent to the outstanding due for the redemption of the said land from United Asian Bank Berhad.